

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

JAMES MOORE, )  
                  )  
Petitioner,     )  
                  )  
v.               )     No. CIV-04-01735-F  
                  )  
HASKILL HIGGINS, JR., Warden, )  
                  )  
                  )  
Respondent.     )

**ORDER**

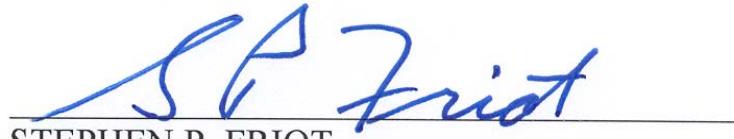
Petitioner, a state prisoner appearing *pro se*, has filed an Application to Proceed in Forma Pauperis (doc. no. 24) in this 28 U.S.C. § 2241 habeas action.

Although 28 U.S.C. § 1915(b) does not apply to habeas actions, *see McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997) (holding Prison Litigation Reform Act inapplicable to habeas and §2255 actions and appeals), both §1915(a)(1) and (a)(3) do apply to a habeas appeal. Accordingly, a petitioner must show that the appeal is taken in good faith and that he lacks the financial ability to pay the required fees. *See Id.*

Having reviewed the motion, the Court finds that Petitioner has presented a reasoned, non-frivolous argument on appeal and that the appeal is taken in good faith in the sense of *Coppedge v. United States*, 369 U.S. 438, 455 (1962) ("good faith" demonstrated by appeal of issue which is not frivolous). The court also finds that based on the attachments to plaintiff's application, he lacks the financial ability to pay the required fees.

Accordingly, the Court finds Petitioner is entitled to proceed without payment of the filing fee, and the Application to Proceed in forma pauperis is hereby **GRANTED**. 28 U.S.C. § 1915(a)(1) and (a)(3).

IT IS SO ORDERED this 3<sup>rd</sup> day of October, 2005.



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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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